

PART 3032—SPECIAL RULES FOR COMPLAINTS ALLEGING VIOLATIONS OF 39 U.S.C. 404

Subpart A—General

Sec.

3032.1 Applicability.

3032.2–3032.4 [Reserved]

Subpart B—Requirements and Defenses

3032.5 Postal Service rules that create an unfair competitive advantage.

3032.6 Disclosure, transfer, and licensing of intellectual property.

3032.7 Unlawfully obtaining information.

3032.8 Statutorily authorized affirmative defense.

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Subpart A—General

§ 3032.1 Applicability.

The rules in this part govern proceedings filed under 39 U.S.C. 3662 alleging violations of 39 U.S.C. 404a that meet the requirements of §§ 3030.2 and 3030.10 of this chapter.

§§ 3032.2–3032.4 [Reserved]

Subpart B—Requirements and Defenses

§ 3032.5 Postal Service rules that create an unfair competitive advantage.

(a) A complaint alleging a violation of 39 U.S.C. 404(a)(1) must show that a Postal Service rule, regulation, or standard has the effect of:

- (1) Precluding competition; or
- (2) Establishing the terms of competition.

(b) As an affirmative defense to a complaint under 39 U.S.C. 404(a)(1), the Postal Service may demonstrate that the rule, regulation, or standard at issue does not create an unfair competitive advantage for itself or any entity funded, in whole or in part, by the Postal Service.

(c) As used in this section, the term *rule, regulation, or standard* includes, among other things, documents or policies issued by the Postal Service to ex-

ercise its regulatory authority or otherwise act as a governmental entity.

§ 3032.6 Disclosure, transfer, and licensing of intellectual property.

(a) A complaint alleging a violation of 39 U.S.C. 404(a)(2) must show that the Postal Service has compelled or attempted to compel the disclosure, transfer, or licensing of the intellectual property of the person filing the complaint to a third party.

(b) As used in this section, the term *intellectual property* includes, among other things, patents, copyrights, trademarks, trade secrets, and proprietary information.

(c) As used in this section, the term *disclosure, transfer, or licensing of intellectual property* includes, among other things, an action that has an adverse effect on the value of intellectual property.

§ 3032.7 Unlawfully obtaining information.

(a) A complaint alleging a violation of 39 U.S.C. 404(a)(3) must show that:

(1) The person filing the complaint has provided or sought to provide a product;

(2) The Postal Service obtained information about such product from the person filing the complaint; and

(3) The Postal Service offers or offered a postal service that uses or is based, in whole or in part, on the information obtained from the person filing the complaint.

(b) As an affirmative defense to a complaint under 39 U.S.C. 404(a)(3), the Postal Service may demonstrate that substantially the same information was obtained (or was obtainable) from an independent source or is otherwise obtained (or obtainable) through lawful means.

(c) As an affirmative defense to a complaint under 39 U.S.C. 404(a)(3), the Postal Service may show that the information obtained was provided by written consent.

§ 3032.8 Statutorily authorized affirmative defense.

(a) As an affirmative defense to an allegation of a violation of 39 U.S.C.